CHAPTER 5

Plan Implementation and Costs and Funding

5.1 Plan Participants and Covered Persons

Imperial Irrigation District (IID) only shall receive an incidental take permit (ITP), under Section 10(a)(1)(B) of the Federal Endangered Species Act of 1973 (FESA), from the U.S. Fish and Wildlife Service (USFWS) pursuant to this habitat conservation plan (HCP). Similarly, IID only shall receive an ITP under Section 2081(b) of the California Fish and Game Code (Code) from the California Department of Fish and Game (CDFG) pursuant to this HCP. Coverage under the ITPs shall extend to others (e.g., farmers) engaged in activities related specifically to the water conservation program, as described below under Chapter 5.1.2: Third-party Beneficiaries.

5.1.1 Role and Responsibilities of IID

Imperial Irrigation District will have the sole responsibility for implementing the HCP. Specific duties include the following:

- Participate in the HCP implementation team (IT)
- Administer funds received from San Diego County Water Authority (SDCWA) pursuant to the Transfer Agreement
- Enter into water conservation agreements with willing farmers
- Implement the commitments of the HCP as described in Chapters 3, 4, and 5 of the IID HCP, including the following:
  - Create and manage habitat as described in Chapter 3, and as modified by the HCP IT and approved by the USFWS and CDFG as provided for in Chapter 4 and 5
  - Conduct monitoring in the HCP area and of created habitats, as described in Chapter 4
  - Implement adaptive management strategies, as described in Chapter 4
  - Generate the periodic reports as described in Chapter 4
- Manage available funds to implement this HCP

5.1.2 Third-Party Beneficiaries

The covered activities include installation and operation of on-farm water conservation activities and fallowing which is considered an on-farm water conservation technique. Under the water conservation and transfer programs, individual farmers would voluntarily participate in the conservation program. The method of achieving water conservation would be at the discretion of the individual farmer. Any take of covered species attributable to farmers resulting from installation or operation of water conservation measures is

covered by the HCP. Furthermore, any take of covered species resulting from cessation of water conservation practices is covered.

5.2 Plan Implementation

IID will be responsible for ensuring that the commitments in the HCP are met. Although the responsibility for implementing the HCP will ultimately rest with IID, the HCP IT will play an important role in guiding the implementation of specific aspects of the HCP over the term of the permit. The CDFG and USFWS (outside of the HCP IT) also will continue to be involved in the HCP over the term of the permit as various aspects of the HCP require approvals from these agencies. The following describes the roles and responsibilities of the HCP IT and the integration of HCP IT oversight of plan implementation with approval requirements from the USFWS and CDFG.

5.2.1 HCP Implementation Team

Under the HCP, IID will convene an HCP IT consisting of representatives of the USFWS, CDFG, and IID to guide execution of the HCP over the term of the HCP. The HCP IT will be responsible for the following:

- Guiding implementation of the HCP measures specified in Chapter 3: Habitat Conservation Plan Components and Effects on Covered Species, including but not limited to:
  - Working with IID to develop habitat creation and management plans
  - Identifying properties appropriate for acquisition
  - Overseeing management of created and acquired habitat
- Refining methods for survey programs and studies,
- Reviewing and interpreting monitoring results, and
- Adjusting the HCP measures under the Adaptive Management Program, including but not limited to:
  - Modifying habitat management practices
  - Refining avoidance and minimization measures

Specific responsibilities of the HCP IT are identified in the HCP measures contained in Chapter 3: Habitat Conservation Plan Components and Effects on Covered Species and in Chapter 4: Monitoring and Adaptive Management and summarized in Table 5.2-1.

It is anticipated that substantial coordination between the HCP IT and IID will be necessary during the initial stages of implementing the HCP with less intensive involvement needed over time. Thus, initially it is anticipated that the HCP IT will meet monthly, but the HCP IT will have the authority to adjust its meeting schedule and frequency as necessary to implement the HCP measures. Over the term of the permit, the HCP IT will meet at least annually to review monitoring results and assess the overall functioning of the HCP.

5.2.2 Decisionmaking Processes and Approvals

IID will be responsible for implementing the HCP requirements, but the HCP IT will have direct oversight on IID's implementation of the HCP. While the HCP IT will have the authority to recommend adjustments in the implementation of the HCP, the HCP IT will not have the power to authorize IID to implement the revised measures and remain in compliance with the HCP. Only the USFWS and CDFG can determine whether future adjustments are in compliance with the HCP requirements. In general, actions that would change the HCP measures or what constitutes fulfillment of a commitment of the HCP measures require approval from the USFWS and CDFG. Actions that require approval from the USFWS and CDFG are identified in Chapters 3, 4, and 5, and are summarized in Table 5.2-1.

TABLE 5.2-1
Actions Requiring Approval from the USFWS and CDFG

Action	Measure or Section
Salton Sea Conservation Strategy	
Plan for maintaining pupfish connectivity	Salton Sea – 2
Design and management of pupfish refugium	Salton Sea – 2
Survey protocol for tamarisk adjacent to the Salton Sea	Salton Sea – 3
Native tree habitat acquisition property	Salton Sea – 3
Native tree habitat creation plan	Salton Sea – 3
Native tree habitat management plan	Salton Sea – 3
Tamarisk Scrub Habitat Conservation Strategy	
Native tree habitat acquisition property	Native Tree Habitat – 1 and 2
Native tree habitat creation plans	Native Tree Habitat – 1 and 2
Native tree habitat management plans	Native Tree Habitat – 1 and 2
Vegetation and wildlife monitoring program	Section 4.2.2
Management adjustments outside approved scope of actions	Section 4.2.3
Drain Habitat Conservation Strategy	
Managed marsh habitat creation plans	Drain Habitat – 1
Managed marsh habitat management plans	Drain Habitat – 1
Acreage of managed marsh to create	Section 4.3.2
Management adjustments outside approved scope of actions	Section 4.3.4
Desert Habitat Conservation Strategy	
Worker education manual	Desert Habitat – 1
Desert habitat restoration plans	Desert Habitat – 3
Desert habitat acquisition property	Desert Habitat – 5
Desert habitat management plans	Desert Habitat – 5

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TABLE 5.2-1
Actions Requiring Approval from the USFWS and CDFG

Action	Measure or Section
Adjustments outside approved scope of actions	Section 4.4.4
Burrowing Owl Conservation Strategy	
Worker education program	Owl – 1
Change in drain/canal maintenance practices	Owl – 6
Demographic study plan	Owl – 7
Desert Pupfish Conservation Strategy	
Determination that drains segments do not support suitable habitat	Pupfish – 1
Selenium monitoring plan and drain reconfiguration plan	Pupfish – 2
Pupfish habitat creation plan	Pupfish – 3
Pupfish monitoring protocol	Pupfish – 4
Maintenance practice evaluation study plan and revised maintenance plan, if needed	Pupfish – 5
Personnel used to capture and handle pupfish	Pupfish – 6
Razorback Sucker Conservation Strategy	
Discontinuation of salvage program	Section 4.7
Other Species Conservation Strategies	
Survey program	Other Species – 1
Species-specific take authorization	Other Species - 2

The HCP IT will have the authority to adjust implementation of the HCP within the scope of actions that have been approved by the USFWS and CDFG. For example, IID must obtain approval from the USFWS and CDFG to implement management plans for managed marsh habitat. In managing the habitat, IID will implement actions recommended by the HCP IT that are within the scope of actions covered by the management plan. Because the USFWS and CDFG previously approved the management plan no additional approvals from these agencies would be necessary. However, if the HCP IT recommends management actions that are outside the scope of the approved management plan, IID would be required to obtain approval from the USFWS and CDFG prior to implementing the action.

The HCP IT will make decisions and recommendations on a consensus basis. If consensus among the three parties of the HCP IT cannot be achieved for a particular decision, the issue will be elevated to the next highest level within each agency until consensus can be achieved. Once the three parties are in agreement, IID will implement the agreed-to action. Figure 5.2-1 displays the decisionmaking and approval process.

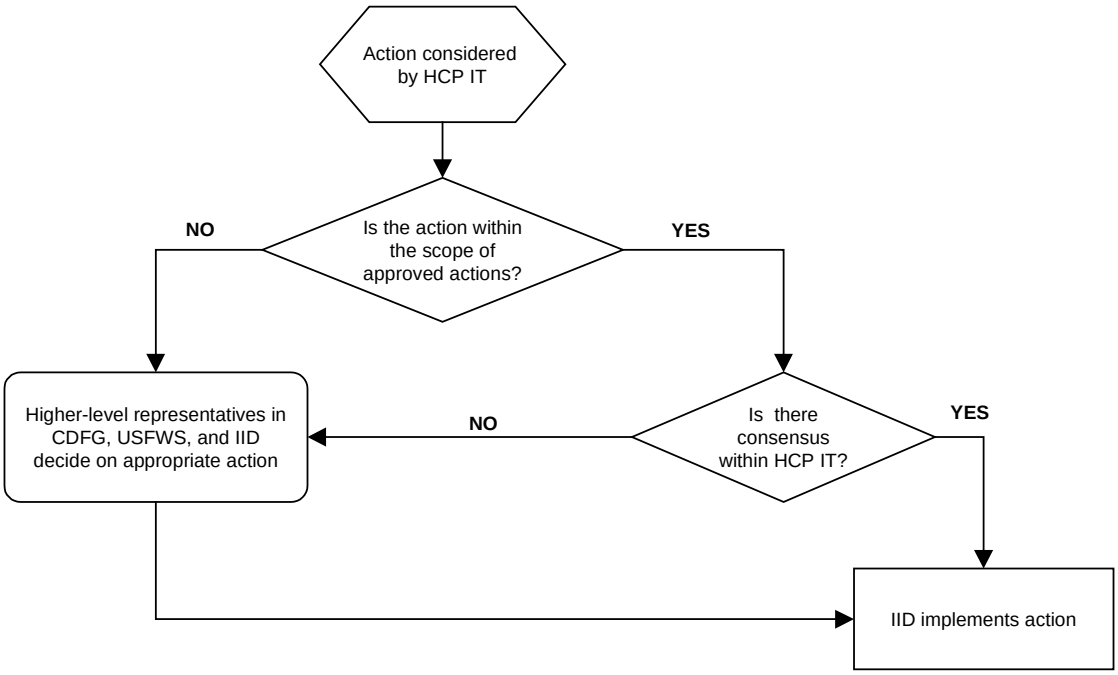

FIGURE 5.2-1
Decisionmaking and Approval Process

5.3 Costs and Funding

The estimated cost of implementing the HCP ranges widely depending on the ultimate amount of habitat creation necessary under the Drain Habitat and Tamarisk Scrub Habitat Conservation Strategies, and for tamarisk adjacent to the Salton Sea under the Salton Sea Habitat Conservation Strategy. Per commitments identified in the IID/SDCWA Water Conservation and Transfer Agreement and the Quantification Settlement Agreement (QSA), approximately $22.5 million has been allocated for the environmental mitigation required to mitigate project impacts and to minimize the impact of the potential take of covered species. Any mitigation costs in excess of the $22.5 million estimated to minimize and mitigate project impacts could be funded through one or a combination of the following: revenue generated through conservation and transfer of water, additional funds contributed by the water agencies, and grants or funding provided by the federal and state governments.

5.4 Response to Emergencies

Occasionally IID must respond to emergency situations. Emergency activities are actions that IID must take immediately and unpredictably to repair or prevent damage to its facilities in order to prevent property damage, protect human health and safety, or maintain mitigation sites. IID's primary responsibility is to deliver water to its customers and maintain drainage in its service area. Because of the risks associated with failure to meet these obligations (e.g., economic loss from crop failure and threats to public safety), IID places a high priority on responding quickly and effectively to emergency conditions.

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During major emergencies, IID follows its emergency plan, which outlines the procedures for mobilizing people and equipment to respond to events that threaten its ability to deliver and drain water. IID also supports an in-house hazardous materials team that responds to spills or discharges of toxic materials.

For this HCP, emergencies are situations under which IID cannot follow the normal procedures detailed under each of the conservation strategies (Chapter 3) to correct or prevent damage to property, risk to human health or safety, to correct or prevent damage to habitat areas maintained as mitigation sites. Emergency activities are most frequently required to respond to storm events or natural disaster (e.g., earthquakes) that result in damage to IID facilities (e.g., canal washout, plugged siphon) and interrupt the distribution or collection of water. In the event of an emergency that simultaneously threatens human health and safety, property and habitat areas, IID will address threats to mitigation areas as quickly as possible. Where the emergency changes the conditions of habitat maintained for covered species, IID will work with the HCP IT, USFWS, and CDFG to restore the habitat as quickly as possible.

Responding to an emergency requires IID to take immediate action. Because of the need to respond immediately in emergency situations, IID would not be able to follow the avoidance measures of the HCP. These measures generally consist of surveying areas for covered species use prior to conducting construction activities and avoiding construction during sensitive time periods if covered species are present. In addition, Tree Habitat–1 requires that construction areas be surveyed prior to construction to determine the acreage and plant species composition of vegetation that would be impacted. Similarly Desert Habitat–5 requires a habitat survey if desert habitat would be impacted. In an emergency situation, IID would not be able to conduct the required species or habitat surveys nor schedule construction to avoid sensitive time periods. The measures IID would not be able to comply with are listed in Table 5.4-1. However, IID would be able to comply with HCP measures that specify restoration or creation of replacement habitat.

TABLE 5.4-1
Measures of the HCP that Contain Elements that IID Would not Be Able to Follow When Responding to Emergencies

Measure	Description
Tree Habitat–1	For construction activities, the site will be surveyed before initiation of construction activities. If tamarisk scrub habitat occurs on the project site and would be affected by the construction activities, the acreage and plant species composition of the affected vegetation will be determined.
Tree Habitat–3	For scheduled construction activities, the site will be surveyed to determine whether any covered species are potentially breeding at the site. If covered species are found, IID will schedule the construction activities that directly affect habitat to occur outside of the breeding season.
Drain Habitat–2	IID will not dredge the river deltas between February 15 and August 31.
Drain Habitat–3	For scheduled construction activities, the site will be surveyed to determine whether any covered species are potentially breeding at the site. If covered species are found, IID will schedule the construction activities that directly affect habitat to occur outside of the breeding season.

TABLE 5.4-1
Measures of the HCP that Contain Elements that IID Would not Be Able to Follow When Responding to Emergencies

Measure	Description
Desert Habitat–3	Prior to initiating construction activities, the HCP Implementation Biologist will conduct a habitat survey of the construction area and adjacent areas. IID will implement the species-specific minimization and avoidance measures contained for the species identified by the biologist as potentially occurring at the construction site. A biological monitor will be onsite during construction activities or exclusion fencing will be erected to keep covered species out of the construction area. The construction area will be clearly flagged prior to the start of construction activities and all construction activities will be confined to the demarcated area.
Owl–5	Prior to replacing facilities or constructing new facilities, workers will coordinate with the HCP Implementation Biologist. The biologist will determine if burrows occupied by burrowing owls would be filled or collapsed by the required work. If occupied burrows would be affected, the work will be scheduled to occur during October through February. Prior to conducting the work, the HCP Implementation Biologist will ensure that owls are not present in the burrows.
Owl–8	For activities that would permanently eliminate burrows suitable for burrowing owls, IID will determine if owls are currently using burrows that would be impacted. If owls are using burrows that would be impacted, IID will conduct the activity during October through February and prior to the start of the activity, the HCP Implementation Biologist will ensure that owls are not present in the burrows.
Pupfish–5	For construction activities (i.e., in-channel modifications) that directly affect pupfish drains, IID will gradually dewater the affected drain segment. IID will ensure that a person qualified to capture and handle pupfish and that meets the approval of the USFWS and CDFG will be present during the dewatering process to salvage and transport any pupfish stranded in the affected portion of the drain. Salvaged fish will be transported to a safe location downstream of the construction site or to a location determined by the HCP Implementation Team.
Sucker–1	IID will salvage any razorback suckers found stranded in the dewatered portions of canals. Salvaged fish will be transported to the Colorado River.

When an emergency occurs, IID will implement the following procedures:

- IID will notify the Implementation Biologist immediately.
- IID will notify the USFWS and CDFG within 24 hours of initiating emergency activities. In notifying the USFWS and CDFG, IID will describe the nature of the emergency and the actions necessary to correct the problem.
- Where multiple actions need to be taken, the HCP Implementation Biologist will work with repair crews to prioritize repairs based on the risk to covered species and habitats for covered species provided under the HCP and threats to human health and safety and property.
- The HCP Implementation Biologist will visit sites where emergency activities are being implemented as soon as possible. The biologist will take pictures of the damaged areas and note the general extent and species composition of any vegetation impacted by the

emergency response activities. IID will use this information to restore or create replacement habitat in accordance with Tree Habitat–1 and Desert Habitat–3 and –5.

- For burrowing owls, the HCP Implementation Biologist will estimate the number of burrows impacted during the emergency activities based on the ongoing surveys and the emergency action site visit. In accordance with Owl–8, IID will install two burrows for every burrow permanently lost as a result of the emergency activities.
- Within one month of completing emergency actions, IID will meet with USFWS and CDFG to review the measures IID will implement to mitigate any impacts resulting from the emergency actions.
- Following agreement with the USFWS and CDFG regarding appropriate mitigation, IID will prepare a Post Incident Report for submittal to these agencies. This report will document:
  - the nature of the emergency
  - the actions taken to address the emergency
  - the impacts to covered species and / or their habitats (e.g., area of drain habitat impacted, approximate number of burrowing owl burrows impacted)
  - the mitigation measures to be implemented to address the impacts
  - monitoring and reporting requirements (if any) for the mitigation measures

To facilitate effective and appropriate responses to emergencies, the HCP IT may refine and further specify these general procedures to address specific types of emergencies that could arise.

5.5 Changed and Unforeseen Circumstances

5.5.1 The No Surprises Rule

The No Surprises Rule, published as a final rule in the *Federal Register* on February 28, 1998 (*63 FR* 8859), generally provides that, as long as the HCP is properly implemented, the federal government will not require additional land, water, or money from the permittee in the event of unforeseen circumstances. Also, any additional measures to mitigate reasonably foreseeable changed circumstances will be limited to those changed circumstances specifically identified in the HCP and only to the extent of the mitigation specified in the HCP.

The No Surprises Rule has the following two major components:

- Changed Circumstances: *Code of Federal Regulations* USFWS regulations (*50 CFR* 17.32) state that:

  > *"If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan. If additional conservation and mitigation measures are deemed necessary to respond to*

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> *changed circumstances and such measures were not provided for in the plan's operating conservation program, the Director will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented."*

- Unforeseen Circumstances: USFWS regulations (*50 CFR* 17.32) state, in part, that:

> *"In negotiating unforeseen circumstances, the Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee. If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee. The Director will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available."*

For the purposes of this HCP, changed circumstances are those changes affecting a species or geographic area covered by an HCP that can reasonably be anticipated and planned for by IID and the USFWS at the time of preparation of the HCP. Unforeseen circumstances refer to changes that could not reasonably have been anticipated by IID and the USFWS at the time the HCP was developed and negotiated, and that result in a substantial and adverse change in the status of a species covered by the HCP. The USFWS bears the burden of demonstrating that unforeseen circumstances exist, using the best available scientific and commercial data available, and considering certain specific factors.

Consistent with the No Surprises Rule and long-established agency practice, the HCP Implementation Agreement includes provisions restricting the authority of the USFWS and CDFG to require additional mitigation measures from IID to provide for the conservation of the covered species.

5.5.2 Changed Circumstances

In discussions with USFWS and CDFG, IID identified several circumstances under which changes could occur during the term of the ITP that would result in a substantial and adverse change in the status of a species covered by the HCP. These relate primarily to circumstances that influence IID's ability to carry out its obligations: (1) on managed marsh and native tree habitats created and managed for mitigation, (2) in habitats supported by IID water (e.g., pupfish drains), and (3) in habitats acquired and managed for mitigation. These circumstances include:

- Seismic activity that affects IID's conveyance and drainage infrastructure and/or its ability to deliver or drain water
- Storm events that result in damage to IID infrastructure and substantial flooding
- Toxic spills that influence operations or directly affect species and habitat
- Introduction and invasion by exotic plant or animal species that affect covered species or their habitat
- Drought conditions in the Colorado River basin that influence the availability of water in the Imperial Valley
- Condemnation of IID mitigation land

In the event that any of the circumstances listed above results in destruction or damage to mitigation land, IID will remain obligated to fulfill the requirements of the HCP and IA. Any mitigation land that is damaged as a result of the above circumstances will be restored as quickly as possible.

The potential for each of these circumstances is reasonably foreseeable. IID's strategy for addressing each of these is described below.

5.5.2.1 Earthquake

Because of its proximity to several faults, the Imperial Valley lies within a very seismically active area. The potential for an earthquake to cause a changed circumstance stems primarily from the possibility of a canal rupture or blockage that impairs IID's ability to deliver or drain water locally. This could potentially inhibit IID's ability to deliver water to the managed marsh and tree habitat mitigation sites over the short term or adversely influence conditions in the drains that support pupfish. In the event that an earthquake ruptures canals or drains, IID will implement the emergency measures described in Section 5.4 of this chapter. These measures are intended to address repairs as quickly as possible and to mitigate potential habitat losses associated with those activities. Because IID's primary business is delivering irrigation water for agriculture in the Imperial Valley, it has a strong incentive to repair damage and restore deliveries as quickly as possible. IID will give managed marsh and tree habitat mitigation sites and pupfish drains the same priority as the most sensitive crops when restoring service to affected areas.

In addition to the potential consequences of earthquake on mitigation sites and pupfish, the repair of earthquake damage along canals (including concrete lining) and drains could affect burrowing owls. Actions taken by IID to repair damage to canals and drains will be carried out according to the emergency measures described in Section 5.4. In addition to these measures, which address the direct effects of emergency repair activities, the HCP IT will have access to a contingency fund allocated specifically to remedy adverse changes in the status of the burrowing owl population (for any reason) in the HCP area as evidenced by the population monitoring program for this species.

5.5.2.2 Flood

On average, the Imperial Valley receives just over three inches of precipitation annually and the potential for major flooding is low. Nonetheless, intense storms occasionally result in

local flooding and damage to IID canals and drains. These flood events typically are short in duration, and are not expected to result in a change in the status of a covered species. Flood damage to IID facilities (e.g., canals and drains) will be addressed and mitigated by the emergency measures described in Section 5.4.

5.5.2.3 Exotic Species

Invasive exotic plant species, such as tamarisk, are common in the agricultural areas of the Imperial Valley. These exotic species, as well as other unwanted vegetation, are routinely controlled by various means in the irrigated areas by farmers and IID. An invasion of exotic species could impair IID's ability to maintain its mitigation lands and habitats or reduce the suitability of these areas to covered species if left unmanaged. Weed control will be an integral element of the management plans developed with the HCP IT for each of the mitigation sites. Therefore, IID anticipates that the potential for exotic or competing plants to adversely affect habitat and covered species is very low and that reasonable outbreaks will be addressed by the current measures identified in the HCP. In the event that an exotic plant species is introduced that cannot be controlled by conventional means, IID will notify USFWS and CDFG as soon as it is identified as a threat to providing habitat for covered species, and work with the HCP IT to develop an appropriate corrective strategy. IID will take those actions deemed necessary and appropriate by the HCP IT to maintain or restore habitat such that it achieves its biological goals.

In addition to the possibility of invasive plants affecting habitat and covered species, introduced animal species have the potential to influence the status of covered species over the term of the HCP. Introduced animals that prey upon or compete with covered species could influence the persistence and survival of covered species in the mitigation sites. If the introduction of an exotic species creates a circumstance that adversely affects a covered species on the mitigation sites, IID will work with the USFWS, CDFG, and HCP IT to develop a strategy for reducing the effects of that species' introduction. Actions could include modifying the management of mitigation lands to discourage the use by exotic species, implementing control measures, or developing educational materials for IID workers and farmers. Any activities conducted by IID in response to an exotic species must be conducted within the original operating budget for the HCP.

5.5.2.4 Drought

As previously described, agricultural production in the Imperial Valley is supported by irrigation and is not dependent on natural rainfall. Similarly, the managed marsh and native tree habitat mitigation sites, and flows in the pupfish drains are supported by water from the Colorado River. While drought in the conventional sense is not a foreseeable concern in the valley, long-term drought conditions in the Colorado River Basin could produce occasional reductions in water supplies that could affect IID's ability to fully deliver water to some or all of its customers.

In the unlikely event that water supplies from the Colorado River were reduced, IID would continue to give the mitigation sites and pupfish drains priority in water delivery. Given the amount of water necessary to support these mitigation and habitat areas relative to the agricultural needs in the valley, IID could easily continue to deliver water to the mitigation lands and the drains that support pupfish.

Over the history of IID's operation, agricultural users in the Imperial Valley have not lost crops or changed cropping patterns due to the unavailability of irrigation water. This is due in large part to the storage capacity of water projects on the Colorado River, the reliability of IID's delivery infrastructure and the seniority of IID's water rights.

5.5.2.5 Disease

Various avian diseases (e.g., avian botulism) are common in the Imperial Valley, and USFWS and CDFG maintain ongoing programs to monitor and control disease outbreaks in the Salton Sea area. Infestations of avian parasites also could occur over the term of the permit. Managed marsh habitat created and managed by IID as mitigation associated with the HCP likely will attract waterfowl and other birds susceptible to diseases and parasites. If ponds are constructed to support fish for piscivorous birds under the Salton Sea Conservation Strategy, fish disease outbreaks and infestations of fish parasites could be a concern. Outbreaks of fish disease or parasite infestations also could be a concern for desert pupfish in IID drains. As part of its ongoing management of mitigation habitat and pupfish drains, IID will monitor the open water and shoreline areas for dead and sick birds and fish, and coordinate the removal and disposal of dead and dying birds and fish (as necessary) with the refuges and the Salton Sea Authority. Coordination consists of mutual notification among the refuges, Salton Sea Authority, and IID as soon as a disease outbreak or parasite infestation is identified and staffing and scheduling work crews. During periods of severe outbreaks, IID will work with the HCP IT to modify its water management practices in the mitigation sites or implement other measures to reduce the potential for infection. Water management practices that could be implemented include completely draining marsh habitat or pond habitats. The removal and disposal of dead birds and fish and adjustments in water management were incorporated in the budgets allocated for the managed marsh mitigation. Additional activities to reduce disease outbreaks will be conducted to the extent the operating budget allows.

5.5.2.6 Toxic Spills

Toxic materials (e.g., anhydrous ammonia, diesel, and pesticides) are frequently transported or used in the Imperial Valley to support agriculture. IID maintains a hazardous materials team that responds to toxic spills. In the event of a spill in a canal that conveyed water to one of the mitigation sites, IID will take immediate action to minimize the migration of the material from the spill site and prevent movement of the material into the mitigation site (e.g., close delivery gates). IID will notify USFWS and CDFG, and work with the HCP IT to develop a plan for restoring water to the affected site. The timing and mechanism for restoring water will be determined by IID and the HCP IT in consideration of the characteristics of the spill and the type of material released.

The accidental release of a toxic material into a drain that supports pupfish will be treated in a manner similar to spills in canals. IID will take actions to minimize the downstream impact of the material in the drain and notify USFWS and CDFG immediately. These actions may include opening spill gates from laterals to the drain to dilute as much as practicable the concentration of the toxic substance within the drain flow. IID and the HCP IT will develop a course of action based on the specific circumstances of the event. Any activities conducted by IID in response to toxic spills must be conducted within the original operating budget for the HCP.

5.5.2.7 Land Condemnation

Over the course of the permit term, IID will create and maintain habitat for mitigation purposes. These mitigation lands will be located in various locations in the Imperial Valley. In the unlikely event that a public entity with the power of eminent domain requires the use of portions of these lands and condemns the property, IID will acquire land in the amount lost and create or restore the habitat values lost. If fewer than 80 acres of mitigation land are lost through condemnation, IID will restore (i.e., design, develop, and plant) the new mitigation land within one year of the event. Affected areas greater than 80 acres will be restored within two years. Funds derived from a condemnation action could be used to fund creation or restoration of habitat values.

5.5.3 Unforeseen Circumstances

There are various, reasonably foreseen events that have the potential to affect the status of a covered species or influence IID's ability to meet its obligations under the HCP. A strategy for responding to potential changed circumstances associated with these events is outlined above. All circumstances not described above that would result in a substantial and adverse change in the status of a covered species are considered unforeseen.

5.6 End of Term of Incidental Take Authorization

IID will receive authorization for incidental take from the USFWS and CDFG. At the end of the permit term, IID would discontinue the water conservation and transfer program. As a result, flows and water quality conditions in the drains and inflow to the Salton Sea would approach pre-project conditions. Unless IID, USFWS, and CDFG negotiate to extend the period of incidental take authorization, the ITPs would no longer be in effect and IID would need to comply with the prevailing regulations regarding listed species. The term of the permit could be extended if IID continued to conserve and transfer water and needed continued incidental take coverage or if IID desired continued incidental take authorization for operation and maintenance (O&M).

Creation of habitat under the HCP is anticipated to attract covered species and to support them through the term of the permit. At the end of the permit term, IID would cease management and maintenance of habitats that are not required to be provided in perpetuity. To minimize adverse effects to covered species that may have colonized created habitats, 5 years prior to the end of the permit term, IID will meet with the USFWS and CDFG (or their successors) to develop a plan for the created habitats after termination of the permit. These agencies will review the status of the covered species that have inhabited the created habitat and consider these species' biological needs in determining whether and how to continue managing the created habitats. Regardless of the plan for the habitat developed by IID, USFWS and CDFG, at the end of the permit term, IID will have no further obligation to provide land, money, water or management of created habitats that are not required to be maintained in perpetuity under the conservation strategies. In addition, any incidental take of covered species resulting from termination of the permit and cessation of IID's obligation to maintain the created habitat is covered by this HCP.